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M.D.

| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/043,657  | 01/08/2002  | Jeff Skillern        | SKIL-001CON         | 6012             |
| 24353   | 7590        | 11/05/2003           | EXAMINER            |                  |
| BOZICEVIC, FIELD & FRANCIS LLP<br>200 MIDDLEFIELD RD<br>SUITE 200<br>MENLO PARK, CA 94025 |             |                      | BREVARD, MAERENA W  |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3727                |                  |

DATE MAILED: 11/05/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                                |                  |
|------------------------------|--------------------------------|------------------|
| <b>Office Action Summary</b> | Application No.                | Applicant(s)     |
|                              | 10/043,657                     | SKILLERN, JEFF   |
|                              | Examiner<br>Maerena W. Brevard | Art Unit<br>3727 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 June 2003.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 13 and 15-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 13 and 15-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 23 and 25 include the following informalities: in line 6 of each respective claim, "trough" should be changed to --through--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 22-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 22 each recite the limitation "said drinking fluid compartment" in line 8, respectively. There is insufficient antecedent basis for this limitation in the claim.

Claims 23 and 25 each recite the limitation "said drinking compartment" in line 6, respectively. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 13 and 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Boxer. Boxer discloses a hydration system comprising:

- A flexible pouch including a plurality of layers (82, 84) all joined together to form at least two compartments (Figure 7);
- At least one of the compartments is filled with a thermal capacitance medium

(80);

- The pouch is formed by a first bag or sleeve (82) surrounded by a second bag or sleeve (84);
- The medium consisting of a cooling or heating medium would be inherent depending on the temperature of insulation relative to the liquid;
- A conduit (48) having an inlet (53) and an outlet (54);
- A valve (56) at the conduit outlet.

6. Claims 13, 19, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Gleason et al.

Gleason discloses a hydration system comprising:

- A flexible pouch including a plurality of layers forming at least two compartments (14, 18);
- At least one of the compartments is filled with a thermal capacitance medium (28), which is capable of being a heating medium to the same degree claimed;
- A conduit having an inlet (top of 18, best shown in Figure 2) and an outlet (22); and
- A valve (22) at the conduit outlet.

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris in view of Johnston.

Harris discloses a method of preparing an integral thermal medium hydration system comprising providing a hydration pouch (60) having a compartment containing gel (Column 5, line 6) and an empty compartment for drinking fluid (Column 5, line 31), chilling or heating the hydration pouch (Column 5, lines 6-7), filling the compartment with drinking fluid through a sealable opening (66), and placing the pouch in a pack (10) but does not teach the pack wearable by a user. However, Johnston teaches a pack (10) wearable (19, 20) by a user. It would have been obvious to attach the shoulder straps of Johnston to the pack of Harris. Doing so would provide an easier means of transporting.

Regarding claims 24 and 26, Harris discloses the claimed invention except for chilling is performed in a freezer and heating performed in a microwave. It is well known to freeze items in a freezer and to heat items in a microwave, therefore it would have been obvious to chill the insert in a freezer and/or heat the insert in a microwave since applicant has not disclosed that chilling or heating solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well.

9. Claims 13 and 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fawcett in view of Boxer and further in view of Satterfield.

Fawcett discloses a hydration system comprising a pack (16) having a drinking fluid compartment (30), a conduit (20) having an inlet (32) in fluid communication with the drinking fluid compartment and an outlet capped by a bite valve (18), and straps (26, 27), but does not teach the pouch including a plurality of layers all joined together to form at least two compartments and a layer forming a compartment filled with gel. However, Boxer teaches a hydration system comprising a flexible pouch including a plurality of layers all joined together to

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form at least two compartments (Figure 7). It would have been obvious to replace the drinking fluid compartment of Fawcett with the multi-layer compartment of Boxer, since it is well known to insulate drinking bags.

Regarding the layer being filled with gel, Satterfield teaches a receptacle (15) being filled with a gel refrigerant (17). It would have been obvious to replace the insulation of the modified hydration system of Fawcett with the refrigerant of Satterfield, since it is obvious to substitute gel for insulation. Doing so would increase the thermal insulating factor and thermal conductivity.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Anderson, Gubernick, Long et al., and Mitchell are cited for containers having thermal mediums.

11. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

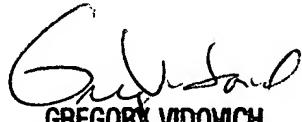
however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maerena W. Brevard whose telephone number is 703/305-0037. The examiner can normally be reached on M-Th; 8:00 AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703/308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/305-0037.

*MWB*  
Maerena Brevard  
October 15, 2003

  
GREGORY VIDOVICH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700